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IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

No. 471

DUNCAN MILLER,

Petitioner,

v.

STEWART L. UDALL,
Secretary of the Interior,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

DUNCAN MILLER
P.O. Box 728, Lake Shore Court
Boulder City, Nevada
Petitioner, Pro se

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Petitioner prays for a writ of certiorari to review the judgment of the U. S. Court of Appeals for the District of Columbia Circuit.

OPINION BELOW

The Court did not write an opinion.

JURISDICTION

The judgment of the Court of Appeals was entered on May 27, 1966. The jurisdiction of this Court is invoked under 28 U.S. Code, 1254(1)

HISTORY OF CASE, PRESENTING QUESTIONS

The Bureau of Land Management in administering the "Mineral Leasing Act" found petitioner to be the first qualified applicant for oil leases. Subsequently, the Interior Department by delegated solicitor authority *ex parte* overruled the Bureau's decision but without allowing petitioner the right to be heard and without notice to him. Petitioner filed suit in the District of Columbia District Court. Summary judgment was entered, again, without notice or hearing. On appeal, the Court of Appeals affirmed. Then, a motion to vacate the judgment filed in the District Court was denied fiat, on the second appeal, the court again affirmed.

The questions presented are:

1. Whether although the decision of the Court of Appeals may have held properly on the basis of the record, if that record was not one of "due process" and the appellate court was limited to its consideration, is petitioner entitled to relief?

   (a) Whether petitioner made a fatal mistake in going back to the district court with his motion to vacate the summary judgment instead of petitioning for certiorari after the first appellate court decision. As a result thereof is he now foreclosed from any relief?

2. Whether the summary judgment of the district court was invalid since it was entered without a date set for a hearing, also while there was no opposition and no opportunity to make same before judgment?

3. Whether the Bureau of Land Management is an agency distinguished from other bureaus of the Interior Department, by Presidential decree, confirmed by statute?

   (a) Whether its finding as to the first qualified applicant pursuant to said "Act" could be disturbed by the Solicitor's Department?

4. Whether a final administrative decision rendered without notice or opportunity to be heard, in violation of due process as held in decisions of this Court, may be set aside and the case remanded on this basis with the above questions being moot.

STATUTES

"Mineral Leasing Act of 1920." 41 Stat. 437, 30 U.S.C § 181 *et seq.* (1958 Ed.) most relevant part of Section 17, 30 U.S.C. § 226 (1958 Ed.) as quoted in Reasons, *infra*, from 85 S. Ct. 792 (1965).

STATEMENT OF THE CASE

In 1958 some four million acres of land on the North Slope of Alaska that were withdrawn from any preemption or appropriation under the public land laws (P.L.O. 82 dated January 22, 1943), pursuant to an order (P.L.O. 1621 dated April 18, 1958) were made available to oil and gas leasing preemption pursuant to the "Mineral Leasing Act of 1920," as amended. Subsequently, substantially all said land was applied for and leases issued except five tracts for which petitioner made application in October 1958 and for which he was found to be the first qualified applicant after adjudication by the Bureau of Land Management which held as follows:

> "It appears, then, that since the conflicting offerors, and their alternates in the drawing held for the lands in question are disqualified because of the collusive manner in which they filed in their lease offers, Duncan Miller, [Petitioner] *is* the *first qualified applicant* for the lands. *Accordingly, if leases are to be issued for the lands in question, they must be issued to the first qualified applicant.* Cf. C. T. Hegwer et al., 62 I.D. 135 (1955). When this decision becomes final the case records will be remanded to the Manager, through the Bureau's Office of the Operations Supervisor at Fairbanks, for the issuance of such leases to Mr. Miller, all else being regular." (Emphasis supplied.)

The four million acres was divided up into leasing tracts and it was provided that at the close of an initial simultaneous filing period a drawing would be held for all tracts for which there was more than one offer. However, it was further provided that any tracts for which the applications filed and drawn might be found to be invalid would thereafter be subject to the first qualified applicant filing over the counter and paying the full rental and fees; the same as the greater percentage of the tracts which have been all leased on this basis.

For the purposes of the drawing the lease offers were put into envelopes with *personal checks* for filing fees and the advance rental enclosed and the tract numbers were placed on the outside of the sealed envelopes. All unsuccessful applications were returned to the various applicants and no record kept of those that were drawn except No's 1, 2 and 3, as drawn.

Petitioner filed for five such tracts for which the No. 1, 2 and 3 applicants all had the same address, a post office box in Dallas, Texas.

Subsequently, petitioner protested and in an appeal to the Bureau of Land Management an investigation was undertaken and in its decision dated September 21, 1961 the Bureau held (as quoted above) that petitioner was entitled to said leases while finding the Dallas post office box address applicants were part of a colossal scheme where a number of people, 59 in all, each had filed 39 lease offers for various tracts, with certain schemers in control who would take the benefits of the leases for tracts drawn and who had agreed to deposit money to the bank accounts of these various applicants to cover the fees for tracts drawn for which their checks would be processed.

There were appeals made by the Dallas post office box parties from the Bureau of Land Management's decision to the Interior Department that resulted in a delegated decision, No. A-29251, which confirmed the invalidity of the fraudulent scheme of the Dallas post office box con-

tingent but ambiguously disturbed the Bureau's ruling that petitioner was entitled to the leases on the grounds that the drawings were invalid because only three applicants were drawn for each tract; therefore, the leases should be drawn over, but the decision did not disclose how this was possible or if it meant only the five tracts in question to be drawn over again. [1]

Action for judicial review was filed in the District Court for the District of Columbia. The respondent moved for summary judgment with a large volume of various documents and material. The District Court granted summary judgment without a hearing. Appeal was taken which resulted in the decision of the Court of Appeals. 349 F.2d 193. A motion was then filed in the District Court to set aside the judgment, in essence, on the ground there was no Constitutional Day in Court to decide the legality of the administrative decision, which also was rendered without a day in the administrative court. As a result each reviewing court only reviewed a record that did not conform to the Administrative Procedure Act, either administratively or judicially.[2]

One of the reasons urged for a day in Court was the economic consideration, petitioner said, truthfully, in this regard:

> "Plaintiff has invested large sums of money under the 'Mineral Leasing Act' in the Alaska land offices[2] for over a dozen years and has never received any income from leases issued to him. Further, in the Southern California District Land Office for over fifteen years plaintiff has likewise invested large sums and never received any income,

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[1] Moreover, currently only one applicant is drawn in such drawings.

[2] Also, certain strange coincidences with the national tragedy in Dallas were set forth.

gross or otherwise, whatsoever from these operations."

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[2] "Plaintiff travelled to Alaska on the representation that the Alaskan lands were to be opened on the historical 'first comer' basis to the *first qualified applicant*."

The District Court denied the motion fiat. On the second appeal the Appellate Court affirmed, on May 27, 1966.

REASONS FOR GRANTING THE WRIT

I.

The Bureau of Land Management Determined That Petitioner Was the First Qualified Applicant Pursuant to Section 17 of the Mineral Leasing Act.

The opinion of this Court at page 794, *Udall v. Tallman*, 85 S. Ct. 792 (1965) orients cogently the law applicable to the instant case:

> "*Section 17 of the Mineral Leasing Act provides, in relevant part, that 'the person first making application for the lease who is qualified to hold a lease* * * * shall be entitled to a lease of such lands without competitive bidding * * * 41 Stat. 443 (1920) as amended by 60 Stat. 951 (1946), 30 U.S.C. § 226 (1958 ed.). *The Bureau of Land Management* of the Department of the Interior *determined* that the Griffin lessees were the persons who had applied first, and issued to them leases on the tracts . . . 1958." (Emphasis supplied.)

The Bureau of Land Management determined that this petitioner, in 1958, "was the first person making application for the lease[s] who is qualified to hold a lease," but the leases were not issued pending adjudication of appeals instituted by the Dallas interests.

The Bureau of Land Management's determination as to such a first qualified applicant being conclusive is punc-

tuated insofar as petitioner's research of such land decisions [3] discloses no cases where such determinations have been abrogated except pursuant to the successful winning appeal of a conflicting applicant to the supervisory authority of the Department of Interior.

In short, administratively, the Bureau of Land Management functions as an agency with the power to perform such functions which could not properly be overruled in circumstances as are found herein.

The Bureau of Land Management became, by Presidential decree in 1946, Reorganization Plan No. 3, Sec. 403, effective July 16, 1946, 11 Fed. Reg. 7876, 60 Stat. 100(a), an *agency* to carry on the *functions* of the abolished General Land Office of the Interior Department, although under sub-paragraph (e) the Bureau is subject to direction and control of the Secretary of the Interior. The Bureau of Land Management in the administration of public lands, specifically pertinent here, the "Mineral Leasing Act," determines, as a part of that function, the first qualified applicant pursuant to said Sec. 17 of the "Act." Such determination is conclusive and leases are issued forthwith pursuant thereto. This determination may only properly be challenged by another entity contending an adverse right.

Something of a minor point is the foregoing if the petitioner's research, as stated, into such land decisions is erroneous, but if the respondent admits [4] that such research is substantially correct, then this minor point is advanced as a major one well worthy of this Court's review.

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[3] Dating back to the Bureau of Land Management's birth.

[4] Petitioner relies strongly on respondent's fairness in this regard.

II.

The Summary Judgment Was Invalid

The record clearly shows that summary judgment was improper for the respondent (defendant below), there was no hearing or date set for a hearing and the summary judgment was entered without the District Court having before it any opposition of petitioner (plaintiff below). The cases are legion that Appellate Courts are limited to review of the record, in the District Court, but since petitioner did not have a day in Court to make a record the Court of Appeals had before it a record that was not one of due process.

However, the foregoing points would seem to be moot, clearly the over-riding issue before this Court is the legality of the administrative decision.

III.

This Administrative Decision Was Illegal Because It Was Rendered Without a Hearing or Opportunity To Be Heard.

The most important provision of the "Administrative Procedure Act" is the right to be heard before a "decision."

In *Best v. Humble Placer*, 83 S. Ct. 379, this Court, in a public land case, reiterated that notice and a hearing were required for administrative "due process." In respondent's petition in that case it was stated:

> *"The Department of the Interior must comply with the requirements of the 'Administrative Procedure Act.'" United States v. Leary*, 63 I.D. 341. (Emphasis supplied.)

This was after discussing the administrative appeal procedures in the petition. That is, a normal administrative decision where there is an opportunity to be heard

pertaining to issues prior to the adjudication resulting in a decision. [5]

The petition further stated:

> "Any person adversely affected by the action of the department is entitled to judicial review."

However, judicial review contemplates something to review pursuant to the "Administrative Procedure Act." Thus, when a final decision is rendered without adjudication of any opposition advanced by the person adversely affected, there is nothing to review. Consequently such a decision could not be in compliance with the "Administrative Procedure Act" and, if such is the case, the decision is illegal.

The Complaint alleged in Par. 10(F) (FJA 7):

> "Particularly, *depriving* plaintiff of his established statutory rights in a *final administration decision* without notice or right of appeal would be *denial* of 'due process'." (Emphasis supplied.)

In *Pacific Molasses Co. v. FTC*, 356 F.2d 386 (1966), on page 387 it is stated:

> "One of petitioner's primary contentions is that they were *denied administrative due process* of law . . . [denial of hearing] If this procedural error did occur . . . then there *has been a denial of due process* and the order . . . cannot be allowed to stand." (Citations omitted.) (Emphasis supplied.)

Finally, the court held in *Pacific Molasses Co.*:

> "Because of the procedural errors committed by the Commission, its decision and order are reversed. . . ."

This Court *explicitly* covered the instant situation in *Morgan v. United States*, 58 S. Ct. at page 776:

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[5] It is believed that if respondent's land decisions were intensely researched, there would not be found one such final *ex parte* decision as the decision complained of — again petitioner relies strongly on respondent's fairness in admitting the truth of the foregoing.

> "Those who are brought into contest with the government in a quasi-judicial proceeding aimed at the control of their activities are entitled to be fairly advised of what the government proposes and *to be heard* upon the proposals *before it issues the final command.* No such reasonable opportunity was accorded the appellants." (Emphasis supplied.)

This petitioner received the "final administrative command" literally as "a bolt out of the (administrative) blue."

This Court struck the flint of the issue in this case in *Shields v. Utah Idaho Centr. R. Co.*, 59 S. Ct. where at page 163, the following most sterling language is found:

> "The Commission is to *'determine.'* The Commission must determine *'after hearing.'* The requirement of a 'hearing' has obvious reference 'to the tradition of judicial proceedings in which evidence is received and weighed by the trier of the facts.' The 'hearing' is 'the hearing of evidence and argument.'[6] Morgan v. United States, 298 U.S. 468, 480, 56 S. Ct. 906, 911, 80 L. Ed. 1288. And the manifest purpose in requiring a hearing is to comply with the requirements of due process upon which the parties affected by the determination of an administrative body are entitled to *insist.*" (Emphasis partly supplied.)

It would seem to follow, as the case stands, this "entitlement to insist" may be fulfilled only by the enforcement by this Court of the principles it has established.

It is routine procedure for this Court to grant certiorari and reverse where full briefing and argument are not warranted, e.g., *Parrot v. Tallahassee,* 381 U.S. 129 (1965); *Commissioner v. Cooper,* 381 U.S. 274 (1965); *Killgore v. Blackwell,* 381 U.S. 278 (1965); *Walker v. Georgia,* 381 U.S. 355 (1965); *McLeod v. Ohio,* 381 U.S. 356 (1965); *Federal Power Commission v. American Petroleum Corp.*, 381 U.S. 762 (1965).

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[6] This did not necessarily mean a hearing where oral argument was presented but simply an opportunity to present some argument and evidence before judgment.

CONCLUSION

For the reasons stated, it is respectfully submitted that this petition for a Writ of Certiorari should be granted.

Respectfully submitted,

Duncan Miller
Petitioner, Pro se

UNITED STATES COURT OF APPEALS
For the District of Columbia Circuit

No. 19,934 September Term 1965

Duncan Miller,
Appellant,
v.
Stewart L. Udall,
Secretary of the Interior,
Appellee.

Civil 1066-63

Filed May 27, 1966

Appeal from the United States District Court for the District of Columbia.

Before: Bazelon, Chief Judge, and Wright and McGowan, Circuit Judges.

JUDGMENT

This cause came on to be heard on the record on appeal from the United States District Court for the District of Columbia, and was submitted on the brief of the parties.

On consideration whereof **it is ordered and adjudged** by this Court that the judgment of the District Court appealed from in this cause be, and it is hereby, affirmed.

Per Curiam

Dated: May 27, 1966

MEMORANDUM

IN OPPOSITION

In the Supreme Court of the United States

OCTOBER TERM, 1966

No. 471

DUNCAN MILLER, PETITIONER,

v.

STEWART L. UDALL, Secretary of the Interior

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

This case involves applications for oil and gas leases on public lands in Alaska under Section 17 of the Mineral Leasing Act of 1920, 41 Stat. 443, as amended, 30 U.S.C. 226. These lands had been opened for a period of simultaneous filings with a drawing held to determine priority. Thereafter, petitioner filed his applications and challenged the successful participants in the drawing. His protest was sustained, but the Secretary of the Interior ultimately

held that, rather than issue the leases to him as a "top-filer," the lands should be re-offered for simultaneous filings and a new drawing held—in which petitioner was free to participate (F.J.A. 66-76).[1]

Both petitioner and the winners at the first drawing sought judicial review of the administrative decision. In both cases summary judgment was entered in favor of the Secretary in the district court and affirmed by the court of appeals. *Miller* v. *Udall*, 349 F.2d 193 (C.A. D.C.); *Robertson* v. *Udall*, 349 F.2d 195 (C.A. D.C.). On remand, the petitioner filed a motion to set aside the judgment (S.J.A. 1-7). The motion was denied. A second appeal was taken, which affirmed without opinion the order of the district court. It is from this second judgment of the court of appeals that petitioner seeks review here.

While it is believed that petitioner was accorded ample opportunity to present all relevant evidence and legal arguments at both the administrative and judicial proceedings, any questions relating to due process prior to the first judgment of the court of appeals are not brought before this Court by the present petition. After the judgment of the court of appeals was entered on June 30, 1965, petitioner had 90 days in which to file a petition for a writ of certiorari covering any error which had been properly preserved until that time. 28 U.S.C. 2101(c). Having no claim within the purview of Rule 60(b) of

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[1] "F.J.A.——" refers to the Joint Appendix in No. 18732. "S.J.A.——" refers to the Joint Appendix in No. 19934.

the Rules of Civil Procedure, petitioner could not, instead, apply to the district court. Nor does the present petition revive questions which were open on the first appeal, decided more than a year ago. *Metropolitan Co.* v. *Kaw Valley District*, 223 U.S. 519, 523-524.

For the foregoing reasons, it is respectfully submitted that the petition for certiorari should be denied.

THURGOOD MARSHALL,
Solicitor General.

EDWIN L. WEISL, JR.,
Assistant Attorney General.

ROGER P. MARQUIS,
A. DONALD MILEUR,
Attorneys.

SEPTEMBER 1966

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PETITIONER'S REPLY TO THE MEMORANDUM IN OPPOSITION

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PETITIONER'S REPLY TO THE MEMORANDUM IN OPPOSITION

Respondent's memorandum is inaccurate in several key propositions related to the legal history of this case. In the first paragraph it states, "These lands had been opened *for* a period of simultaneous filings . . ."

The context of Public Land Order #1621 (Pet. p. 3), discloses that the "lands" were opened *[with]* "a simultaneous filing period," however, the greater percentage of the lease tracts were applied for afterwards, the same as in this case.

Said Public Land Order #1621, in Paragraph 4, states in pertinent part:

> "These notices will describe the land SUBJECT TO NONCOMPETITIVE LEASE and will *PROVIDE* for a simultaneous filing period of offers to lease."

Paragraph 1 of the Order states, with reference to the modification of Land Order #82:

> ". . . to permit . . . issuance of mineral leases pursuant to the Mineral Leasing Act . . ."

The foregoing has been followed since substantially all the *area opened* to Mineral Leasing has had *leases issued* except the tracts that the Bureau of Land Management determined that leases should be issued to petitioner.

On page 2, the phrase, "top-filer" is used in a misleading connotation, since it has always been the mode in such leasing activities. This Court in *Bosche v. Udall*, 373 U.S. 472 (1965), held that such a "top-filing" applicant was entitled to a lease, over a prior unqualified applicant; subsequently, pursuant thereto, the unqualified applicant's lease was cancelled in favor of the so-called "top-filing" qualified applicant.

In the third paragraph on page 2, the contention is made that petitioner seeks *only* review of the second judgment of the Court of Appeals, but this is one of the questions presented. However, the memorandum fails to cite any relevant authorities or even discuss the question.

In the final paragraph on page 2, respondent with reluctance barely touches the overriding primary question of "due process," merely saying "it is believed," but no showing that petitioner was actually accorded "due process" is made! The petition on page 8, points to the circumstances and recites the facts to the contrary which includes the fact that the Summary Judgment was invalid, because of lack of "due process." Respondent does not deny that there was no date set for a hearing in the District Court as prescribed by the Federal Rules of Civil

Procedure, as well as the local rules of the District Court. Further, on pages 8, 9 and 10 of the petition, a 1966 appellate case on all fours with the due process position of petitioner is cited without any rebuttal in the memorandum. The very words of the respondent as a petitioner before this Court in *Best v. Humble Placer*, 337 U.S. 334, wherein there was full acknowledgment that public land administrative proceedings were subject to the "administrative procedure act," are quoted also without rebuttal.

In *Pan-Atlantic St. Corp. v. Atlantic Coast L. R. Co.*, 353 U.S. 436, this Court said in the last paragraph:

> "We think such a reading of the law would mutilate the administrative system which Congress created by the two Acts. Where the remedy for an evil is clear, the remedial provisions of the Administrative Procedure Act should be given full effect. SEE: Wong Yang Sung v. McGrath, 339 U.S. 33, 41, 70 S. Ct. 445, 450, 94 L. Ed. 616."

The principles of due process stratified by this Court in *Morgan v. United States*, 304 U.S. 1, and in *Shields v. Utah-Idaho Central R. Co.*, 305 U.S. 177, which control this case, are ignored by the opposition Memorandum.

Petitioner had valid statutory rights to the leases as determined by the Bureau of Land Management (Pet. p. 3), and then one sad day he opens his Mail Box in which there is an envelope enclosing "a decision," peremptorily striping him of these statutory rights. Surely in such a case where there was both administratively and in the District Court, such an unreasonable violation of petitioner's constitutional rights, the motion to set aside the judgment in the District Court, was a logically legal procedure. The Complaint was mistakenly denominated, one for judicial review, while in truth plaintiff was seeking a *declaratory judgment*, on the *legality* of the *Administrative Decision*. In the light of the failure to permit administratively the right to be heard, there could be no judicial review because there was no administrative record. Pursuant to the "Administrative Procedure Act," the District Court

would have no jurisdiction to review an administrative decision in violation of the "Act" in this respect.

Further, there seems to be a limbo as to the reasoning or intent of the *administrative decision* involved in the case under review, as discussed on page 5 of the petition. No reason is even suggested why petitioner's statutory rights should, as to the leases, be denied and the leases opened for new[1] applicants, some of whom were not even interested or qualified in 1958, when the statutory rights to the leases were acquired as established by the Bureau of Land Management, such proposed procedure is as illogical as it would be for petitioner to ask return of the depleted large sums of money invested with respondent (Pet. pp. 5 & 6), or just as logical as to re-offer for simultaneous filings the leases involved in the *Tallman* case, 380 U.S. 1. Moreover, respondent does not explain what would happen to the other leases involved in the land opening, under the Public Land Order.

Respondent does not deny that the Bureau of Land Management's decision, was a *legal* administrative decision, *is the only legal administrative decision,*[2] there is no denial that *never* has the department *overruled* such a decision, establishing lease statutory rights, as the first qualified applicant, unless it was for the benefit of an adverse applicant or entity, as fully set forth in the petition pages 6 & 7. Furthermore, there is no denial of the fact that *none* of the land *decisions* of the *Department* have ever been rendered against such an applicant for oil and gas leases, with established statutory rights without opportunity to be heard in opposition. For 46 years, since the enactment of the Mineral Leasing Act, of 1920, the foregoing is true.

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[1] Also old applicants who had bagged their limit in lease applications in the original opening — this would result in a violation of Sec. 27 of the Mineral Leasing Act.

[2] With respect to petitioner's case.

For the reasons stated in the petition and supplemental herein, petitioner should be granted appropriate relief.

Respectfully submitted,

Duncan Miller

Petitioner, Pro se

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STEWART L. UDALL,
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ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

PETITION FOR REHEARING

DUNCAN MILLER
P.O. Box 728, Lake Shore Court
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ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

PETITION FOR REHEARING

Petitioner submits the following as a basis for a rehearing:

In the petition and in the reply to the memorandum of the respondent in opposition, the principle issue was conclusively shown to be a fact. This fact is that the statutory rights, established by the Bureau of Land Management, to have oil and gas leases issued, were abrogated without *ANY* notice or opportunity to be heard.

In *National Broadcasting Co. v. FCC*, 362 F.2d 916 (D.C. Cir. 1966), at page 953, the Court discoursed, the question of the right to a hearing *confirming* the grave injustice done to this petitioner:

> ". . . of . . . cardinal importance [is] the right to be heard where *one's interests* are acutely affected by the actions of an *administrative agency*. It is fundamentally *abhorrent to our system of jurisprudence* to deny a hearing to a litigant where justice and law require that a hearing be held. The court is certainly in agreement with this principle and recognizes it as one of the *essential elements of our form of government*. Having recognized the importance of the right to be heard, the question for our purposes, becomes: Has [petitioner] been accorded this right . . ." (Emphasis supplied)

Over and over again in the proceedings there has been emphasized and reemphasized, that there was no hearing for petitioner in the administrative proceedings, and there was *no hearing* in the district court in the action that he filed, which should have been *adjudicative of the fact* that there was *no hearing* administratively. Clearly there has been a round robin of injustice heretofore. Petitioner believes that this Court should ameliorate this injustice.

In 64 I.D. at page 336, the respondent said:

> "The Ingersoll Case, supra, although not directly applicable to this case, recognizes a *salient principle of law* that this Department [of the Interior] has been *scrupulous to follow*, and that is, that no one should be deprived of his rights without adequate *notice*." (Emphasis supplied)

Pursuant to the words of respondent above, such a callous disregard of a citizen's rights under the law must have been through administrative inadvertence; or, should be recognized as a highly shocking breakdown in the governmental processes and procedures.

Most important, disregarding the rights of petitioner per se, this Court should grant a rehearing because as the history of this case shows, there was a strange connection

with the national tragedy in Dallas. By following the "due process" rule of law in this matter, something further of interest may be learned of the tragedy. Therefore, references are made to the brief of Appellant in No. 19,934 in the court below. Petitioner quotes from joint appendix, page 6, of said brief as follows:

> "Refocusing on the other post office box, 1161, Dallas, Texas, was it used horrendously in violation of postal regulations and also the fraud section? It will be noted that plaintiff's said document was received by the Department early in 1962. Suppose the wheels of justice had properly started moving moderately fast in the direction of Dallas to institute some action in the matter of Box 1161. They would have reached Dallas in the essence of time. It is possible (and there is no reason why) if the Dallas post office had been apprised or put on guard, that such *illegal post office box collusive use* and activities *at Dallas* would have been *scrutinized* with a resultant screening so that *Box 2905 at Dallas would never have received any weapons* and the proper authorities would have been alerted. The foregoing HYPOTHESIS is a fantastically logical one which points to the question 'Why?' (Emphasis supplied)
>
> "Further strange coincidences are: the defendant's officer interviewing some of the collusive lease applicants utilizing the post office box address at Dallas was named "Kennedy"; and even stranger, the same oil man who was identified as the principal in the use of the box for the collusive scheme is the same one, apparently, who attempted or purchased the alleged *assassin's weapon* from the Oswald estate received at the *other post office box in Dallas.*" (Emphasis supplied)

It is very curious and paradoxical indeed! when the facts were: that the Post Office Box of Oswald was used for the receipt of Communist literature, but was allowed to be used for the purpose of transmittal of the two different guns to the dummy name of Hidell, although it was apparently Oswald himself who picked up the guns; yet, what has been labeled "mail checks" by the post office author-

ities that have received much publicity and complaints by citizens, were commonplace. Strangely the most publicized "mail check" instance was that of the former prosecuting attorney in the case wherein two communist spies were convicted of espionage, and subsequently executed.

The instant administrative decision of the Department came out, or rather was promulgated, on a date, that coincided within a few days of the approximate date of the delivery of said guns. That is said "decision" which dealt with the use of another P. O. Box at Dallas for the collusive, dummy land scheme.[1]

If during the preparation of the administrative decision there had been *liaison with the post office in Dallas*, keeping in mind that it was inferred administratively by the petitioner that there was a horrendous violation of the postal laws, then the chances certainly would have been very good, that this liaison would have caused the Dallas Post Office to have taken such action as would have aborted the gun deliveries with a possible consequent nipping in the bud of the alleged nefarious plot.

Respectfully submitted,

Duncan Miller

Petitioner, Pro se

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[1] Respondent has ignored interrogatories pertaining to the circumstances of these matters. A motion addressed to the Hon. Chief Justice for an order requiring the respondent to make response to the said interrogatories was filed prior to filing this petition for a rehearing. Petitioner now notes that it was somewhat inadequate in background, therefore he is submitting a copy of said Motion and Memorandum, in the appendix, and wishes to make it a part of the overall reasons in support of his petition for a rehearing.

I hereby certify that the foregoing petition is presented in good faith, and not for delay.

_____

Duncan Miller

APPENDIX

* * *

MOTION ADDRESSED TO THE HONORABLE CHIEF JUSTICE

Petitioner moves that the Honorable Chief Justice Earl Warren, order the respondent to make response to interrogatories, served on respondent in the proceedings in the Appellate Court.

OBJECT AND GROUNDS FOR THE MOTION

There has been shown in the proceedings in this case a strange relationship with the National Tragedy in Dallas, Texas. Therefore, it is clearly in the public interest that any facts or further coincidences that may be brought out, should be.

A memorandum setting forth the interrogatories in question as well as a brief statement of points with argument, is attached hereto, in support of the motion.

Respectfully submitted,

Duncan Miller,
Petitioner, pro se

MEMORANDUM IN SUPPORT OF PETITIONER'S MOTION TO REQUIRE THE RESPONDENT TO RESPOND TO SPECIAL INTERROGATORIES

REPRODUCTION OF: PETITIONER'S LETTER TO RESPONDENT

IN THE MATTER OF CASE NO. 19,934
COURT OF APPEALS (D. C. CIR.) NOW
BEFORE THE SUPREME COURT ON
PETITION #471

Sept. 2, 1966

Hon. Stewart L. Udall
Secretary U. S. Department of the Interior
Washington 25, D. C.

Honorable Sir:

The above captioned case concerns fraud in connection with the mineral leasing "Act" and laws of the United States, specifically oil and gas leases in Alaska, as uncovered by the Bureau of Land Management* after I pointed out the indications thereof.

Subsequently, strange coincidences in the case, with the National Tragedy in Dallas, have come to light, then pertaining thereto, a "Special request for admissions of facts and interrogatories was filed in the Appellate Court with copy to your counsel, who had the case in the District Court, but there was no response.

* The Bureau clearly recognized the connection between Texas and Alaska, since it distributed copies of its decision to the Hon. Ernest Gruening - U. S. Senate and Hon. John G. Tower, U. S. Senate.

CC: Hon. Sen. Gruening
Hon. Sen. Tower
Hon. Thurgood Marshall-Solicitor General

The clerk of the Appellate Court by letter dated, March 29, 1966, stated, "There is no provision in the rules of this Court for filing such a special request." However, no legal authority was cited, as to why the document was not proper, pursuant to the discovery rules of F.R.C.P.

In any event, it is suggested that legal technicalities be waived, since, when there is a connection between Alaska public land oil frauds and the National Tragedy in Dallas, surely there must be no suppression of any facts that may be brought out.

It is trusted that this letter will be received and acted upon in the public interest,

Respectfully submitted,

[Petitioner]

PETITIONER has received no reply to the above letter as of this date.

REPRODUCTION OF:
PETITIONER'S SPECIAL REQUEST
FOR ADMISSION OF FACTS AND INTERROGATORIES
SERVED ON RESPONDENT
MARCH 26, 1966

TO THE HONORABLE THOS. L. McKEVITT,
Counsel for the Defendant, (below):

Appellant is submitting a special request for several admissions and interrogatories. They are termed "special" because they may be beyond the scope of the "Federal Rules of Civil Procedure" at this stage in the proceedings; nevertheless, it is trusted that the defendant will answer responsively in the public interest to the following:

1. (a) With respect to the post office boxes in Dallas referred to in the Motion to Set Aside the Judgment of plaintiff below, are there any further coincidences or other circumstances known having to do with these said boxes along the lines as noted in the points and authorities of said Motion?

(b) Is there any statement out of context, inaccurate, misleading in said document (Motion with points and authorities) as to either of said post office boxes or otherwise? If so, please specify.

(c) Is there anything further that the Court should be shown in the historical, broad premises of this unprecedented and bizarre case?

2. (a) To what extent have defendant's officers collaborated or had liaison with the Post Office Department regarding the collusive or fraudulent use of such post office boxes with respect to the filing of applications and leases, etc., under the public land and mineral laws?

(b) It is true that the use of Post Office boxes as shown would be a violation of Title 18, U. S. Code, Section 1001 and 1341.

Respectfully submitted,

[Petitioner]

Certificate of Service, etc. OMITTED.

PETITIONER has received no response from respondent, in connection with the foregoing.

REPRODUCTION OF: PETITIONER'S LETTER OF TRANSMITTAL TO THE CLERK OF THE COURT

RE: Case No. 19,934

March 26, 1966

The Honorable Nathan J. Paulson, Clerk
United States Court of Appeals
For the District of Columbia Circuit

Sir:

I am transmitting a document containing interrogatories to the appellee's counsel in the District Court.

Because of the strange and historical nature of the circumstances involved in this case it is felt that said document should be entertained so that the Court may be more fully knowledgeable in the premises.

Very truly yours,

[Petitioner]

ARGUMENT

PETITIONER bases this motion on the strength of the last paragraph of the quoted letter. The strange circumstances and facts that petitioner pointed to in the proceedings in the District and the Appellate Courts, as plaintiff and appellant respectively, are such that it will be truly in the public interest to fully explore these matters presented.

In *King vs. U. S.*, 364 F.2d 235 (1966), the Fifth Circuit dealt with the question of the Oswald guns on page 236, the Court seems to agree that Oswald was in violation of said Sec. 1001, Title 18. However, as far as Petitioner can determine there is no mention of the mail fraud section, or the P. O. Box, to which the guns were delivered

at Dallas. Also, it would appear the Court was unaware of the connection of its appellant with the other Dallas Post Office Box. Some six or eight months back the radio stations throughout the country broadcast a short 2 or 3 minute excerpt from an English play dealing with the tragedy, the importance of the P. O. Box at Dallas was emphasized.

In *Rosenblatt v. Baer*, 86 S. Ct. 669 (1966), this Court said:

> "Criticism of those responsible for government operations must be free, lest criticism of government itself be penalized."

Understandably petitioner is critical. It was he alone who uncovered the oil lease Alaska Land Fraud Scheme, and also the strange connection with the National Tragedy at Dallas.

Respectfully submitted,

Duncan Miller
Petitioner pro se

CERTIFICATE OF SERVICE

Petitioner certifies that copy of this Motion and Memorandum, were mailed to the Honorable Thurgood Marshall, Solicitor General, Department of Justice, Washington, D. C. on this _____ day of November, 1966.

Duncan Miller